

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>U.S. BANK, N.A.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>8:11CV243</b>
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>STACIA M. JARZOBSKI,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the court *sua sponte*.

This action was initially filed by the plaintiff in the County Court of Douglas County, Nebraska. **See** Filing No. 1 - [Ex. 2](#). According to the allegations in the complaint, the plaintiff extended credit to the defendant who then failed to pay the plaintiff in the amount \$7,349.47. *Id.* The defendant filed an answer and counterclaim alleging violations pursuant to the Fair Debt Collection Practices Act, [15 U.S.C. § 1692](#), et seq., and the Truth in Lending Act, [15 U.S.C. § 1601](#), et seq. *Id.* [Ex. 3](#). On July 8, 2011, the plaintiff removed the action to this court stating federal question jurisdiction exists based on the defendant's counterclaims. **See** [Filing No. 1](#) - Notice of Removal.

No party has moved for remand, however “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” [28 U.S.C. § 1447\(c\)](#). The party seeking removal has the burden of establishing federal subject matter jurisdiction by a preponderance of the evidence.

[\*\*James Neff Kramper Family Farm P'ship v. IBP, Inc.\*\*](#), 393 F.3d 828, 831 (8th Cir. 2005). Since removal to federal court is a statutory right, and not one granted under the Constitution, removal jurisdiction must be narrowly construed in favor of the non-removing party. [\*\*Shamrock Oil & Gas Corp. v. Sheets\*\*](#), 313 U.S. 100, 107-09 (1941). A district court is required to resolve doubts concerning federal jurisdiction in favor of remand, strictly construing the removal statute. [\*\*Transit Cas. Co. v. Certain Underwriters at Lloyd's of London\*\*](#), 119 F.3d 619, 625 (8th Cir. 1997); [\*\*In re Bus. Men's Assurance Co. of Am.\*\*](#), 992 F.2d 181, 183 (8th Cir. 1993). The determination about whether a federal court has

removal jurisdiction is made on the basis of the record at the time of removal. Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 43 (1998).

The court finds the notice of removal appears insufficient to grant this court jurisdiction. In this case, the face of the complaint states a specific amount of damages. Such showing may be determinative and indicates no diversity jurisdiction exists. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 294 (1938). The plaintiff alleges federal question jurisdiction exists. "Federal question jurisdiction, however, is determined solely by the allegations contained in the plaintiff's complaint. It is well-established that a defendant cannot remove based on a counterclaim." Duckson, Carlson, Bassinger, LLC v. Lake Bank, N.A., 139 F. Supp. 2d 1117, 1118 (D. Minn. 2001) (citing Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987)); see Magee v. Exxon Corp., 135 F.3d 599, 601 (8th Cir. 1998) (noting exception of complete preemption). Similarly, the plaintiff has shown no statutory right exists for **the plaintiff** to remove this matter based on a defense or counterclaim. See Duckson, 139 F. Supp. 2d at 1119 (citing Shamrock Oil, 313 U.S. at 107). The plaintiff does not allege complete preemption. Nevertheless, the plaintiff shall have an opportunity to show cause why this matter should not be summarily remanded.

**IT IS ORDERED:**

The plaintiff shall have to **on or before November 2, 2011**, to show cause why this matter should not be remanded for lack of subject matter jurisdiction.

DATED this 12th day of October, 2011.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge